

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DARRYL ANTHONY ROBINSON,

Plaintiff,

v.

CASE NO. 05-CV-73163-DT
HONORABLE AVERN COHN

IVANA RAIRIGH, et al.,

Defendants.

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**OPINION AND ORDER SUMMARILY DISMISSING COMPLAINT
AND VACATING ORDER OF REFERENCE**

I.

This is a civil rights case under 42 U.S.C. § 1983. Plaintiff is a state prisoner currently confined at the Baraga Maximum Correctional Facility in Baraga, Michigan and is proceeding *pro se* and *in forma pauperis*.

Plaintiff claims that defendant Sergeant Mauldin, a corrections officer at the Southern Michigan Correctional Facility ("JMF") in Jackson, Michigan, reviewed prison misconduct charges beyond the 24-hour time limit and that defendant Ivana Rairigh, a misconduct hearing officer, found him guilty of major misconduct. Plaintiff seeks removal of the misconduct from his file, a transfer back to JMF, and monetary damages. For the reasons that follow, the complaint must be dismissed under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1) for failure to state a claim upon which relief may be granted and on the basis of immunity.

II.

The Court is required to *sua sponte* dismiss an *in forma pauperis* complaint before service on a defendant if it determines that the action is frivolous or malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. 42 U.S.C. § 1997(e)(c); 28 U.S.C. § 1915(e)(2)(B). The Court is also required to dismiss a complaint seeking redress against government entities, officers, and employees which it finds to be frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A. A complaint is frivolous if it lacks an arguable basis either in law or in fact. *Denton v. Hernandez*, 504 U.S. 25, 31 (1992). A *pro se* litigant's complaint must be liberally construed. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972).

III.

A claim for declaratory relief or monetary damages which necessarily implies the invalidity of the punishment imposed, cannot be brought under 42 U.S.C. § 1983 until the conviction upon which the claim is based has been overturned or otherwise declared invalid. *Edwards v. Balisok*, 520 U.S. 641, 648 (1997). Thus, where a prisoner's claim of unfair procedures in a disciplinary hearing necessarily implies the invalidity of the loss of good time credits, they cannot bring a claim under § 1983.

Here, Plaintiff cannot bring a claim under § 1983 because ruling on his claim would, if established, necessarily imply the invalidity of the disciplinary decision. Moreover, Plaintiff has not shown that his misconduct conviction has been overturned or invalidated. Thus, his complaint must be dismissed.

IV.

Additionally, Plaintiff's claim for monetary damages against defendant Rairigh is also subject to dismissal on the basis of immunity. As a hearing officer, defendant Rairigh is entitled to absolute immunity from liability on a § 1983 claim for damages. *See Shelly v. Johnson*, 849 F.2d 228 (6th Cir. 1988).

V.

For the reasons stated above, Plaintiff has failed to state a claim upon which relief may be granted under 42 U.S.C. § 1983 and that defendant Rairigh is absolutely immune on the claim for monetary damages. Accordingly, the complaint is

DISMISSED.

Given this determination, the order referring all pretrial matters to the magistrate judge is **VACATED**.

Lastly, the Court concludes that an appeal from this order would be frivolous and therefore cannot be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); *see also McGore v. Wrigglesworth*, 114 F.3d 601, 610-11 (6th Cir. 1997).

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: September 21, 2005

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, September 21, 2005, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager (313) 234-5160